

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022 SESSION

UCV4622 – CIVIL PROCEDURE II

(All Sections / Groups)

20 APRIL 2022

Reading Time: 9:00 AM – 9:15 AM

(15 Minutes)

Answering Time: 9:15 AM – 12:15 PM

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 6 pages with 5 Questions only.
3. This paper consists of two parts. **PART A** is **COMPULSORY**. **PART B** to attempt **either question 4A or 4B**. The distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of Rules of Court 2012 into the exam venue. “Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY**QUESTION 1**

Answer the following questions which are separate and independent.

- (a) The Plaintiff's claim against the Defendant, a bank, is for breach of contract, negligence and defamation. The relevant paragraphs of the Statement of Claim filed in the Sessions Court at Seremban, are as follow –

STATEMENT OF CLAIM

1. ...
2. ...
3. ...
4. On or about 20.08.2021, the Plaintiff caused a cheque No. 502452 ("Tiger cheque") for the sum of RM100,000 payable to the Plaintiff to be deposited with the Defendant.
5. The Tiger cheque should be cleared within two days from 20.08.2021 or thereabout, and that the said sum of RM100,000 should have been credited into the Plaintiff's account, but in breach of the Defendant's duty the Tiger cheque was only cleared on or about 29.08.2021.
6. On or about 23.08.2021, the Plaintiff not knowing that the Tiger cheque had not been cleared drew a cheque No. 191727 ("Lion cheque") for the sum of RM100,000 payable to Bangtan Bhd. When the cheque was duly presented to the Defendant for the payment, the Defendant wrongfully and/or in breach of its duty, dishonoured the Lion cheque.
7. In the premises the Plaintiff suffered loss and damage and much anxiety.
8. Further/and in the alternative, the Defendant falsely and maliciously wrote on the Lion cheque of and concerning the Plaintiff the words "Refer to drawer" ('defamatory words') and published the defamatory words to:
 - a) Bangtan Bhd;
 - b) Other parties to whom the Defendant has published the cheque and has yet to be ascertained as at the date of this Statement of Claim.
9. (Further averments on defamation)
10. By reason of the premises the Plaintiff has also suffered serious injuries in his credit and reputation and in his business and has suffered loss and damage as a result thereof.

Continued...

11. (Claim for general damages and exemplary damages)

12. In the premises, the Plaintiff claims:

After the close of pleadings, the Plaintiff instructs his solicitors that the Tiger cheque number should be 502425 and that the cheque was only cleared on 30th August 2021. The Plaintiff also instructs that the Lion cheque was to be payable to Bangtan Men Bhd. The Plaintiff further instructs that the sum of RM100,000 should have been credited into his account No. 051-014567-025 and that he suffered loss and damage and much inconvenience, including anxiety and nervous shock. The Plaintiff also instructs his solicitors to exclude the averments in paragraph 9 of the Statement of Claim. Accordingly, the Plaintiff instructs his solicitors to do the necessary amendments to the Statement of Claim.

Based on the above –

- (i) Explain the procedure in which the Plaintiff may amend the statement of claim.
(5 marks)
 - (ii) Reproduce the Statement of Claim as shown above and effect in writing the proposed amendments.
(10 marks)
- (b) The Plaintiff is suing the Defendant for fraudulent transfer of the Plaintiff's 1/4 share in Lot 122, Mukim Kemena, District of Bintulu, Sarawak to the Defendant, which was allegedly done without the Plaintiff's knowledge or consent. The Defendant has filed a Defence and Counterclaim. Meanwhile, the Plaintiff has filed an application (Enclosure 18) for an order to provide further and better particulars within 7 days from the date of the order in respect of the Defence and Counterclaim. The reasons for Enclosure 18 are, among others, for the Plaintiff to be informed of the case of the Defendant; to prevent from being taken by surprise at the trial and to know what and to prepare the evidence for the trial. The Defendant is objecting to Enclosure 18 on the grounds that the Defendant has pleaded the material facts to be relied upon in the pleading; particulars in respect of matters of evidence should not be granted; the Plaintiff is not entitled to the further and better particulars as of right; and particulars sought by the Plaintiff are unreasonable, improper and oppressive and thus amount to an abuse of the process of the court.

Decide on the Plaintiff's application in Enclosure 18.

(10 marks)

Total: 25 marks

Continued...

QUESTION 2

Answer the following questions which are separate and independent.

- (a) “In my view ... the mere fact that an *ex parte* order under [section 19 of the Debtors Act 1957] has been discharged ... does not *ipso facto* mean that an application for a *Mareva* injunction by the same plaintiff on the same grounds is bound to fail because, amongst other considerations, the points requiring proof for a *Mareva* injunction are less demanding than those required for a [section 19] order ... and [there are] important differences between these two remedies.”

Per Edgar Joseph Jr J in *Pacific Centre Sdn Bhd v United Engineers (Malaysia) Bhd* [1984] 2 MLJ 143

Examine the differences between the two remedies mentioned above.

(10 marks)

- (b) The Plaintiff and the Defendant are involved in steel related industry and have entered into two Sales Contracts, namely (i) Sales Contract No. 1 for the purchase of 20,000 metric tons of Steel Prime Cast at the total price of RM600,000.00; and (ii) Sales Contract No. 2 for the purchase of 20,000 metric tons of Re-Bar Billets at the total price of RM200,000.00. The Plaintiff claims that the Defendant is in breach of Sales Contract No. 2. According to the Plaintiff, on 3 February 2021, the Defendant informed the Plaintiff that the Defendant would not be proceeding with Sales Contract No. 2. Hence, the Plaintiff claims for damages for breach of contract and unjust enrichment. The Plaintiff has filed an application (Enclosure 8) for essential documents relating to the revenue gained by the Defendant from the breach of Sales Contract No. 2. In Enclosure 8, the Plaintiff avers that the loss of profits suffered by the Plaintiff is caused from the Defendant’s breach of contract. In the alternative the Plaintiff claims the difference in the market price for the steel billets due to the breach.

Based on the above –

- (i) Explain the application in Enclosure 8.

(5 marks)

- (ii) Evaluate the grounds that should be raised by the Defendant in order to object to the application.

(10 marks)

Total: 25 marks

Continued...

QUESTION 3

Answer the following questions which are separate and independent.

- (a) The Plaintiff has filed an application (Enclosure 21) together with supporting affidavit (Enclosure 22) in his civil action by way of Writ of Summons (Enclosure 1) against the Defendant. Enclosure 21 seeks from the Sessions Court at Seremban several orders against the Defendant. The latter is opposing Enclosure 21 and has filed an affidavit in reply (Enclosure 23). The Defendant has raised several grounds related to alleged infirmities with regard to the Enclosure 22 filed by the Plaintiff in support of Enclosure 21. In response to the Defendant raising objections to Enclosure 22, the Plaintiff has raised his own objections to Enclosure 23, that is, Enclosure 23 was not affirmed by the Defendant himself. Instead, it was affirmed by the solicitor acting for the Defendant.

As the Sessions Court judge, decide whether Enclosure 22 and Enclosure 23 may be accepted, used and considered at the hearing of Enclosure 21.

(10 marks)

- (b) “It is well known among practitioners that there are two lines of authorities in respect of Agreed Bundles.”

Per Hamid Sultan JCA in *Yeo Ing King v Melawangi Sdn Bhd* [2016] MLJU 555

Explain the two lines of authorities.

(10 marks)

- (c) Explain the difference between ‘judgment’ and ‘order’ in terms of drawing up each one of them.

(5 marks)

Total: 25 marks

Continued...

PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B**QUESTION 4A**

Answer the following questions which are separate and independent.

- (a) A judgment in default of appearance (JIDA) was entered against the Defendant on the 5 May 2020. The application to set aside the JIDA was filed on 5 August 2020. The Defendant admitted that he received the JIDA which was served by way of Registered Post on 14 May 2020 at the Defendant's registered office address. Upon obtaining the JIDA, the Plaintiff had filed a garnishee application against the Defendant. At the hearing of the Defendant's application to set aside the JIDA, counsel for the Plaintiff contended that the said garnishee application was a fresh step.

Explain what garnishee application is and why it is a fresh step.

(12 marks)

- (b) A judgment in default of appearance (JIDA) was entered against the Defendant on 13 May 2020. On 20 January 2021 the Defendant filed an application to set aside the JIDA. The application was dismissed by the Magistrates' Court on 25 March 2021 with cost. On 19 April 2021, a Notice of Appeal dated 16 April 2021 was filed against the decision of the learned Magistrate in dismissing the application to set aside the JIDA. The Notice of Appeal was served on the Plaintiff on 20 April 2021 to which an objection was raised by the Plaintiff on the ground that the Notice of Appeal was filed out of time and hence the appeal was incompetent.

Determine whether the appeal is competent.

(13 marks)

Total: 25 marks

Continued...

QUESTION 4B

The Plaintiff had filed a Writ of Summons and Statement of Claim against the Defendant vide suit number 72-90(12)-2019 in the Magistrates' Court at Muar to claim outstanding arrears in rental amounting to RM22,750. When the Defendant failed to enter appearance, a judgment in default (JIDA) was entered against the Defendant on 13 May 2020. The Plaintiff then filed for a Writ of Seizure and Sale (WSS) pursuant to a Writ of Execution (WE) and obtained an Order for Seizure and Sale (OSS) dated 9 February 2021. Meanwhile, the Defendant had, earlier on 20 January 2021, filed an application to set aside the JIDA. Defendant had also filed an application on 16 February 2021 to stay the execution of the OSS pending the disposal of application to set aside the JIDA. Both of the Defendant's applications to set aside the JIDA and to stay the execution of the OSS were heard together on 25 March 2021. Both applications were dismissed by the learned Magistrate with cost.

Based on the above –

- (a) Explain WE, WSS and the effect of WSS. (12 marks)
- (b) Justify the decision to dismiss the application to stay the execution of the OSS. (13 marks)

Total: 25 marks

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